

No. 12700

United States
Court of Appeals
for the Ninth Circuit.

FEDERAL TRADE COMMISSION,

Petitioner,

vs.

WHITNEY & COMPANY, a Corporation, Its
Officers and JAMES R. O'BRIEN, His Repre-
sentatives, Agents and Employees,

Respondent.

Transcript of Record

Petition for Enforcement of Order of
The Federal Trade Commission
Court of the United States.

FILED
MAY 17 1961
PAUL F. O'BRIEN, CL

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

BOGLE, BOGLE & GATES,

Central Building,
Seattle, Washington,
For the Respondent.

JAMES W. CASSEDY,

Washington, D. C.,
For the Petitioner.

United States of America Before Federal Trade
Commission

Docket No. 5279

In the matter of

CARL RUBENSTEIN, individually and acting as agent for and in behalf of his son, Samuel Rubenstein, CARL RUBENSTEIN (partnership), WHITNEY & COMPANY, a corporation, PUGET SOUND & ALASKA TRADING COMPANY, INC., a corporation, and JAMES R. O'BRIEN.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, have violated and are violating the provisions of subsection (c) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

Paragraph One: Respondent Carl Rubenstein, an individual residing in the City of Seattle, State of Washington, is a partner with his son, Samuel Rubenstein, in a firm which operates under the trade name of "Carl Rubenstein." The individual respondent Carl Rubenstein and the firm of "Carl Rubenstein" have their principal offices and place of

business at 3001 Smith Tower Building, Seattle, Washington.

Respondent Carl Rubenstein is a partnership composed of the individual respondent Carl Rubenstein and his son, Samuel Rubenstein. The partnership does business under the registered trade name of "Carl Rubenstein" (although this partnership is sometimes and for some purposes known as Rubenstein & Rubenstein).

Respondent Whitney & Company is a corporation organized and existing under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 3001 Smith Tower Building, Seattle, Washington.

Samuel Rubenstein, the son of the individual respondent Carl Rubenstein, is an official of the hereinafter named respondents Whitney & Company and Puget Sound & Alaska Trading Company, Inc., and is a large stockholder in each of said companies. Samuel Rubenstein is in the United States Army and, prior to his departure for the Army several years ago, executed and delivered to his father, Carl Rubenstein, a general power of attorney whereby the respondent Carl Rubenstein as an individual was empowered to act for and did act in behalf of said Samuel Rubenstein in connection with the business conducted as "Carl Rubenstein," partnership, Whitney & Company and Puget Sound & Alaska Trading Company, Inc.

The officials of the respondent Whitney & Company on July 7, 1941, organized Puget Sound & Alaska Trading Company, Inc., for the specific pur-

pose of conducting certain of the business of Whitney & Company which the officers of Whitney & Company did not believe should be conducted under Whitney & Company's name. This business can best be described as the sale of sea food products directly to large buyers at net prices which reflected brokerage.

Respondent Puget Sound & Alaska Trading Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Washington with its principal office and place of business located at 3001 Smith Tower Building, Seattle, Washington. Respondent Puget Sound & Alaska Trading Company, Inc., is owned by and is a subsidiary of Whitney & Company.

Respondent James R. O'Brien is an individual residing in the City of Seattle, State of Washington, and has his office and principal place of business located at 3001 Smith Tower Building, Seattle, Washington. Said respondent James R. O'Brien is also an official and a large stockholder in Whitney & Company and Puget Sound & Alaska Trading Company, Inc.

Paragraph Two: Respondents Carl Rubenstein, individually, and Carl Rubenstein (the partnership), together with James R. O'Brien, individually and as an official of Whitney & Company and Puget Sound & Alaska Trading Company, Inc., together with Whitney & Company, a corporation, and Puget Sound & Alaska Trading Company, Inc., a corporation, all occupy jointly and severally a suite of

offices located at 3001 Smith Tower Building, Seattle, Washington, which offices are the principal offices and place of business of each of the respective respondents.

Paragraph Three: Each of the respondents since June 19, 1936, has been and is now engaged in the business of buying, selling and distributing canned salmon, canned tuna, canned mackerel and other canned sea food products (all of which are hereinafter designated as sea food products) for their own account for resale.

The respondents since June 19, 1936, in the course and conduct of their said businesses, have sold and distributed a substantial portion of their sea food products directly and through brokers, to buyers located in states other than the state in which the respondents are located and as a result of said sales and the respondents' instructions, such sea food products are shipped and transported across state lines to such buyers so located.

Paragraph Four: All sea food products sold by respondents bear a label upon which appears a brand, trade-mark, or trade name. Such labels are attached to such sea food products to identify and distinguish them as the products of the persons owning the brands from the products of competitors.

A brand, trade-mark, or trade name may be defined as a symbol of business good will. Good will is an attitude in people which causes them to continue to patronize a certain place or person or to purchase a definite commodity. Upon the brand used depends to whom the good will created by the product ac-

crues. Thus, when respondents sell goods which bear their own brand, the good will accrues to them; whereas, when they sell goods bearing the brand of another, the good will accrues not to the respondents but to the person who owns the brand. That such is the purpose and effect of the use of brands is well known in the industry.

The respondents' sea food products are sold and distributed under two distinct brand classifications, namely, (1) sellers' brands and (2) distributors' brands.

A seller's brand may be defined as a brand, owned and controlled by the original seller, and as referred to herein designated brands owned and utilized by respondents in the promotion and sale of its products, which brand identifies the particular products for which respondents assume the responsibility all the way through the channels of distribution to the consumer, and whatever good will is established thereby accrues to respondents. Respondents determine the sales and price policies with reference to such sea food products. Among the brands so used by respondents are:

Bestred, Farbest, Blue Bird, Best Yet, Red Rambler, Sprite, Whitney's Best, Whitworth. Golden Shore, Sea Run, Northern Gem, North View.

Distributors' brands may be defined as brands owned and controlled by other than the original sellers and as referred to herein designate brands utilized by distributors other than the respondents which identify the sea food products with the particular distributor and permit such distributors to

promote the sale of those sea food products independently of respondents; and distributors rather than respondents assume the responsibility all the way through the channels of distribution to the consumer and not whatever good will is established accrues to the distributors and not to the respondents. Distributors and not respondents determine the sales and price policies with reference to such sea food products.

Paragraph Five: Respondents sell and distribute sea food products by two separate and distinct methods.

First: The first method is by selling to buyers through brokers of sea food products.

A broker of sea food products may be defined as a sales agent who negotiates the sale of sea food products for and on account of the seller as principal and whose compensation is a commission or brokerage fee paid by the seller. A broker of sea food products does not buy sea food products from his principal and sell such products for his own account.

Such brokers act as respondents' sales agents, soliciting and obtaining orders for respondents' sea food products at respondents' prices and on respondents' terms. Such brokers transmit such purchase orders to respondents who thereafter invoice and ship the sea food products to the customers. The respondents pay such brokers for their service in negotiating and making such sales for respondents' account, commissions or brokerage fees, which are customarily based on a percentage of the invoice sales prices of the sea food product sold.

The sea food products so sold by brokers always

bear the brand or label of the respondents or of the buyers to whom respondents sell. Therefore, none of the good will established by the products accrues to the brokers. Such brokers are not traders for profit and do not take title to or have any financial interest in the product sold, and neither make a profit nor suffer a loss on the transaction.

Second: The second method is by the sale of sea food products by the respondents direct to buyers. All such buyers referred to herein are "direct buyers." In transactions between respondents and such buyers, respondents do not use brokers.

There are in fact two separate and distinct classifications of direct buyers. One class is known as "buying brokers" (who designate themselves as brokers but who are not in fact brokers). The other class of direct buyers consists, among others, of chain stores, large wholesalers and members of buying groups.

The sea food products sold by respondents to such direct buyers principally bear brands or labels owned by such buyers, and as to such sea food products, all the good will established by the products accrues to such direct buyers.

Respondents also sell to other direct buyers (some of whom also incorrectly designate themselves as "brokers") who purchase respondents' sea food products exclusively under respondents' brands or labels in their own respective names and for their own accounts for resale.

Respondents pay such buyers of their sea food products, directly or indirectly (regardless of

whether such sea food products are purchased under respondents' labels or distributors' labels), commissions or brokerage fees, or allowances or discounts in lieu thereof on such purchases.

Such direct buyers transmit their own purchase orders for sea food products directly to the respondents. The respondents thereafter invoice and ship such sea food products directly to such buyers from whom respondents collect the purchase price of the merchandise. The respondents, among their several methods of sales, pay such buyers commissions or brokerage fees on such purchases by deducting or allowing from the invoice price of the sea food products purchased an amount which is equal or approximately equal to the commissions or brokerage fees paid by the respondents to their brokers (as illustrated in method one), or by selling to such buyers at a net price which reflects brokerage.

Contrary to the manner in which brokers operate (as described in method one above) such buyers are traders for profit purchasing and reselling such sea food products in their own names and for their own accounts, taking title to the sea food products and assuming all risk incident to ownership.

Such resales are not made at the prices, and on the terms dictated by respondents, but at the prices and on the terms determined by the buyer who makes a profit or suffers a loss thereon, as the case may be.

Said direct buyers shop the market, and purchase sea food products from several sellers, including respondents, and purchase where they are able to secure the most favorable prices and terms, includ-

ing the payment of commissions and brokerage fees.

Said buyers pay the price of the sea food products purchased from respondents, as a condition precedent to delivery of such sea food products by the carrier to them. If the sea food products shipped by respondents to the buyers are lost or damaged in transit, such buyers file claim with the carrier and collect damages from the carrier or for their own accounts.

Such buyers, upon receipt of such sea food products from respondents, warehouse them in their own warehouses or in public warehouses and insure the products at their own expense and in their own names and for their own accounts against contingent loss or damage. Subsequently, said buyers pledge warehouse receipts and insurance contracts covering these products they have purchased as security for loans from banks.

Paragraph Six: The respondents, since June 19, 1936, in connection with the interstate sale of their sea food products by the second method set forth in Paragraph Five, have paid or granted and are now paying or granting, directly and indirectly, commissions, brokerage, or other compensation, or discounts **in lieu** thereof, to buyers of their food products, and such acts and practices as set forth above are in violation of subsection (c) of Section 2 of the Clayton Act as amended.

Wherefore, the Premises Considered, the Federal Trade Commission on this 12th day of February, A. D., 1945, issues its complaint against said respondents.

NOTICE

Notice is hereby given you, Carl Rubenstein, individually and acting as agent for and in behalf of his son, Samuel Rubenstein, Carl Rubenstein (partnership), Whitney & Company, a corporation, Puget Sound & Alaska Trading Company, Inc., a corporation, and James R. O'Brien, respondents herein, that the 23rd day of March, A. D., 1945, at 2 o'clock in the afternoon, is hereby fixed as the time and the offices of the Federal Trade Commission in the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you will have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violations of the law charged in the complaint.

You are notified and required, on or before the twentieth day after service upon you of this complaint, to file with the Commission an answer to the complaint. If answer is filed and if your appearance at the place and on the date above stated be not required, due notice to that effect will be given you. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule IX) provide as follows:

In case of desire to contest the proceeding the respondent shall within twenty (20) days from the service of the complaint, file with the Commission an answer to the complaint. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Re-

spondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state.

* * *

Failure of the respondent to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission, without further notice to respondent, to proceed in regular course on the charges set forth in the complaint.

If respondent desires to waive hearing on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondent admits all the material allegations of fact charged in the complaint to be true. Respondent by such answer shall be deemed to have waived a hearing on the allegations of fact set forth in said complaint and to have authorized the Commission, without further evidence, or other intervening procedure, to find such facts to be true.

Contemporaneously with the filing of such answer the respondent may give notice in writing that he desires to be heard on the question as to whether the admitted facts constitute the violation of law charged in the complaint. Pursuant to such notice, the respondent may file a brief, directed solely to that question, in accordance with Rule XXIII.

In Witness Whereof, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 12th day of February, A. D., 1945.

By the Commission.

[Seal] /s/ OTIS B. JOHNSON,
Secretary.

United States of America Before Federal Trade
Commission

Docket No. 5279

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 20th day of March, A. D., 1945

Commissioners: Ewin L. Davis, Chairman
Garland S. Ferguson
Charles H. March
William A. Ayres
Robert E. Freer

[Title of Cause.]

ORDER APPOINTING TRIAL EXAMINER
AND FIXING TIME AND PLACE FOR
TAKING TESTIMONY

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission,

It Is Ordered that John L. Hornor, a Trial Examiner of this Commission, be and he hereby is desig-

nated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It Is Further Ordered that the taking of testimony in this proceeding begin on Thursday, April 26, 1945, at ten o'clock in the forenoon of that day (Pacific Standard Time), in Room 117, Federal Office Building, Seattle, Washington.

Upon completion of testimony for the Federal Trade Commission, the Trial Examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The Trial Examiner will then close the case and Make his Report upon the Facts; Conclusions of Facts; Conclusions of Law; and Recommendation for Appropriate Action by the Commission.

By the Commission:

/s/ OTIS B. JOHNSON,
Secretary.

United States of America Before Federal Trade
Commission

Docket No. 5279

[Title of Cause.]

ANSWER

Comes Now the respondents, Carl Rubenstein, individually and acting as agent for and in behalf of his son, Samuel Rubenstein, Carl Rubenstein (partnership), Whitney & Company, a corporation, Puget Sound & Alaska Trading Company, Inc., a corpo-

ration, and James R. O'Brien, and answering the complaint herein in the above-entitled proceeding, each of whom states that for the purpose of this proceeding only, and in order to dispose of the matter set forth in the complaint without trouble and expense incident to a contest of the issues, admit each and every material allegation of fact set forth in said complaint.

Each of the respondents for a further answer, however, state that they have discontinued the practices complained of and that they are no longer directly or indirectly granting and allowing commissions or brokerage fees to buyers on interstate purchases made by such buyers in their own behalf. Each of the respondents further aver that they have no intention of resuming said practices.

Each of the respondents hereby specifically waive all intervening procedure, including hearings as to the facts, Trial Examiner's Report, and the filing of briefs and oral argument.

CARL RUBENSTEIN,
individually and acting as agent for and on behalf
of his son Samuel Rubenstein

By /s/ CARL RUBENSTEIN,

CARL RUBENSTEIN
(partnership)

By /s/ CARL RUBENSTEIN,

WHITNEY & COMPANY,
a corporation,

By /s/ JAMES R. O'BRIEN,

PUGET SOUND & ALASKA
TRADING COMPANY, INC.,

By /s/ SAM RUBENSTEIN,

JAMES R. O'BRIEN,

By /s/ JAMES R. O'BRIEN.

Dated this 11 day of Dec., 1945.

Filed Jan. 8, 1946.

United States of America Before Federal Trade
Commission
Docket No. 5279

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 9th day of January, A. D., 1946.

Commissioners: William A. Ayres, Chairman,
Garland S. Ferguson,
Ewin L. Davis,
Robert E. Freer,
Lowell B. Mason.

[Title of Cause.]

ORDER GRANTING RESPONDENTS'
REQUEST FOR PERMISSION TO WITH-
DRAW ANSWER AND TO FILE SUBSTI-
TUTE ANSWER

This matter coming on to be heard by the Com-

mission upon the request of respondents for permission to withdraw their answers herein received on February 26, 1945, and thereafter filed, and to substitute in lieu thereof the supplemental answer dated December 11, 1945, and annexed to said request, and the Commission having duly considered the said request and the record herein, and being now fully advised in the premises:

It Is Ordered that respondents' request that they be permitted to withdraw their answers received on February 26, 1945, and thereafter filed herein, and to file in lieu thereof their answer dated December 11, 1945, and annexed to said request be, and the same hereby is, granted.

By the Commission.

[Seal] /s/ OTIS B. JOHNSON,
Secretary.

United States of America Before Federal Trade
Commission

Docket No. 5279

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 25th day of March, A. D., 1946.

Commissioners: William A. Ayres, Chairman,
Garland S. Ferguson,
Ewin L. Davis,
Robert E. Freer,
Lowell B. Mason.

[Title of Cause.]

FINDINGS AS TO THE FACTS AND
CONCLUSION

Pursuant to the provisions of an Act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), and by virtue of the authority vested in the Federal Trade Commission by the aforesaid Act, the Federal Trade Commission on February 12, 1945, issued and subsequently served its complaint in this proceeding upon the respondents, Carl Rubenstein, individually and acting as agent for and in behalf of his son, Samuel Rubenstein, Carl Rubenstein (partnership), Whitney & Company, a corporation, Puget

Sound & Alaska Trading Company, Inc., a corporation, and James R. O'Brien, charging them with the violation of subsection (c) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act. After the issuance of said complaint and the filing of respondents' answer thereto, the respondents withdrew said answer and filed in lieu thereof an answer admitting all the material allegations of fact set forth in said complaint and waiving intervening procedure and further hearing as to said facts. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint and substitute answer filed by the respondents; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

Findings as to the Facts

Paragraph One: Respondent Carl Rubenstein, an individual residing in the City of Seattle, State of Washington, is a partner with his son, Samuel Rubenstein, in a firm which operates under the trade name of "Carl Rubenstein." The individual respondent Carl Rubenstein and the firm of "Carl Rubenstein" have their principal offices and place of business at 3001 Smith Tower Building, Seattle, Washington.

Respondent Carl Rubenstein is a partnership composed of the individual respondent Carl Ruben-

stein and his son, Samuel Rubenstein. the partnership does business under the registered trade name of "Carl Rubenstein" (although this partnership is sometimes and for some purposes known as "Rubenstein & Rubenstein").

Respondent Whitney & Company is a corporation organized and existing under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 3001 Smith Tower Building, Seattle, Washington.

Samuel Rubenstein, the son of the individual respondent Carl Rubenstein, is an official of the hereinafter named respondents Whitney & Company and Puget Sound & Alaska Trading Company, Inc., and is a large stockholder in each of said companies. Samuel Rubenstein is in the United States Army and, prior to his departure for the Army several years ago, executed and delivered to his father, Carl Rubenstein, a general power of attorney whereby the respondent Carl Rubenstein as an individual was empowered to act for, and did act in behalf of, said Samuel Rubenstein in connection with the business conducted as "Carl Rubenstein," partnership, Whitney & Company, and Puget Sound & Alaska Trading Company, Inc.

The officials of the respondent Whitney & Company on July 7, 1941, organized Puget Sound & Alaska Trading Company, Inc., for the specific purpose of conducting certain of the business of Whitney & Company which the officers of Whitney & Company did not believe should be conducted under Whitney & Company's name. This business can best

be described as the sale of sea-food products direct to large buyers at net prices which reflected brokerage.

Respondent Puget Sound & Alaska Trading Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 3001 Smith Tower Building, Seattle, Washington. Respondent Puget Sound & Alaska Trading Company, Inc., is owned by, and is a subsidiary of, Whitney & Company.

Respondent James R. O'Brien is an individual residing in the City of Seattle, State of Washington, and has his office and principal place of business located at 3001 Smith Tower Building, Seattle, Washington. Said respondent James R. O'Brien is also an official of, and a large stockholder in, Whitney & Company and Puget Sound & Alaska Trading Company, Inc.

Paragraph Two: Respondents, Carl Rubenstein, individually and as a copartner with Samuel Rubenstein trading as "Carl Rubenstein," together with James R. O'Brien, individually and as an officer of Whitney & Company and of Puget Sound & Alaska Trading Company, Inc., a corporation, together with Whitney & Company, a corporation, and Puget Sound & Alaska Trading Company, Inc., a corporation, all occupy jointly and severally a suite of offices located at 3001 Smith Tower Building, Seattle, Washington, which offices are the principal offices and place of business of each of the respective respondents.

Paragraph Three: Each of the respondents, since June 19, 1936, has been engaged in the business of packing, and in the sale and distribution of, canned salmon, canned tuna, canned mackerel, and other canned sea-food products, all of which are hereinafter referred to as "food products."

Paragraph Four: Respondents cause said food products, when sold by them, to be transported from their aforesaid place of business in the State of Washington to purchasers thereof located in various other states of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said food products in commerce among and between the various states of the United States.

Paragraph Five: Respondents sell said food products through legitimate intermediaries who act as their agents and to whom are paid commissions and brokerage fees for the services so rendered. In addition, the respondents also sell their food products to direct buyers, who may be either so-called "buying brokers" or chain stores, large wholesalers, and members of buying groups. In so selling their food products the respondents use their own brand names, such as "Bestred," "Farbest," "Blue Bird," "Best Yet," "Red Rambler," "Sprite," "Whitney's Best," "Whitworth," "Golden Shore," "Sea Run," "Northern Gem," and "North View." In addition, respondents also sell such food products under brands of their buyers, which brand names are different from those of the respondents' brands and

which identify the food products with the particular buyer or distributor.

Paragraph Six: The respondents, since June 19, 1936, in connection with the sale of their food products in interstate commerce, have sold their food products under their own brands or under the brands of their buyers to direct buyers who purchase respondents' food products in their own names and for their own accounts for resale. During the time mentioned herein respondents have paid or granted to such direct buyers, directly or indirectly, commissions, brokerage, or other compensation, or allowances or discounts in lieu thereof, on such purchases made in their own names and for their own accounts for resale.

Such direct buyers transmit their own purchase orders for food products direct to respondents, who invoice and ship such food products direct to such buyers and collect the purchase price from them. The respondents, among their several methods of sales, pay such buyers commissions or brokerage fees on such purchases by deducting or allowing from the invoice price of the food products purchased, an amount which is equal or approximately equal to the commissions or brokerage fees paid by respondents to their brokers or by selling such buyers at a net price which reflects brokerage.

Contrary to the manner in which brokers operate, such buyers are traders for profit, purchasing and reselling such food products in their own names and for their own accounts, taking title to the food prod-

ucts and assuming all the risk incident to ownership. The resale of such merchandise is not made at prices and on terms dictated by respondents but at the prices and on the terms determined by the buyer, who makes a profit or suffers a loss thereon, as the case may be. Such direct buyers shop the market and purchase food products from several sellers, including respondents, and purchase where they are able to secure the most favorable prices and terms, including the payment of commissions and brokerage fees. If the food products shipped by the respondents to the buyers are lost or damaged in transit, such buyers file claim with the carrier and collect damage from such carrier for their own accounts. Such buyers, upon receipt of such food products from respondents, warehouse them in their own warehouses or in public warehouses and insure the products at their own expense and in their own names and for their own accounts against contingent loss or damage and pledge warehouse receipts and insurance contracts covering these products they have purchased as security for loans from banks.

Conclusion

The paying and granting by the respondents, directly or indirectly, of commissions, brokerage, or other compensation, and allowances or discounts in lieu thereof, to buyers of their food products who purchase such food products in their own names and for their own accounts for resale, as hereinabove

found, are in violation of subsection (c) of Section 2 of the Clayton Act as amended.

By the Commission.

[Seal] /s/ W. A. AYRES,
 Chairman.

Dated this 25th day of March, A. D. 1946.

Attest:

 /s/ OTIS B. JOHNSON,
 Secretary.

United States of America Before Federal Trade
 Commission

Docket No. 5279

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 25th day of March, A. D. 1946.

Commissioners: William A. Ayres, Chairman,
 Garland S. Ferguson,
 Ewin L. Davis,
 Robert E. Freer,
 Lowell B. Mason.

In the Matter of
CARL RUBENSTEIN, individually and acting as
agent for and in behalf of his son, Samuel Rubenstein, CARL RUBENSTEIN (partnership), WHITNEY & COMPANY, a corpora-

tion, PUGET SOUND & ALASKA TRADING COMPANY, INC., a corporation, and JAMES R. O'BRIEN.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and substitute answer of the respondents, which substitute answer admits all the material allegations of fact set forth in said complaint and waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of subsection (c) of Section 2 of the Act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act):

It Is Ordered that the respondents, Whitney & Company, a corporation, and Puget Sound & Alaska Trading Company, Inc., a corporation, and their respective officers, and Carl Rubenstein, individually and as a copartner trading as Carl Rubentsein, and James R. O'Brien, and their respective representatives, agents, and employees, directly or through any corporate or other device in connection with the sale and distribution of canned salmon, canned tuna, canned mackerel, and other canned sea-food products in commerce as "commerce" is defined in the

aforesaid Clayton Act, do forthwith cease and desist from:

Paying or granting, directly or indirectly, to any buyer, anything of value as a commission or brokerage, or any compensation, allowance, or discount in lieu thereof, upon purchases made for such buyer's own account.

It Is Further Ordered that the respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

By the Commission.

[Seal] /s/ OTIS B. JOHNSON,
Secretary.

CERTIFICATE

I, Wm. P. Glendening, Jr., Acting Secretary of the Federal Trade Commission, and official custodian of its records, do hereby certify that transmitted herewith is a full, true, and complete transcript of proceedings had before the Federal Trade Commission in the above entitled matter.

That this transcript is certified to the United States Court of Appeals for the Ninth Circuit, pursuant to the filing in said Court of an application for enforcement of an Order to Cease and Desist dated March 25, 1946, entered by the Federal Trade Commission in the above indicated proceeding.

In witness whereof, I hereunto subscribe my name, and affix the seal of the said Federal Trade Commission, at its office in the City of Washington, D. C., this 21st day of September, A. D. 1950.

[Seal] /s/ WM. P. GLENDENING, JR.,
Acting Secretary.

[Endorsed] No. 12700. United States Court of Appeals for the Ninth Circuit. Federal Trade Commission, Petitioner, vs. Whitney & Company, a corporation, its officers and James R. O'Brien, his representatives, agents and employees, Respondents. Transcript of the Record. Petition for Enforcement of Order of the Federal Trade Commission Court of the United States.

Filed: September 29, 1950.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals for the
Ninth Circuit

No. 12700

FEDERAL TRADE COMMISSION,

Petitioner,

vs.

WHITNEY & COMPANY, a corporation, its officers,
and JAMES R. O'BRIEN, his representatives,
agents and employees,

Respondents.

APPLICATION FOR ENFORCEMENT OF
ORDER TO CEASE AND DESIST

To the Honorable United States Court of Appeals
for the Ninth Circuit:

Comes Now the Federal Trade Commission, an administrative Commission established by, and existing under and by virtue of, an Act of Congress entitled: "An Act to Create a Federal Trade Commission, etc.," approved September 26, 1914, as amended March 21, 1938 (38 Stat. 717; 15 U. S. C. 41; 52 Stat. 111.), hereinafter referred to as the "Commission," and pursuant to the provisions of Section 11 of the Clayton Act (15 U. S. C. 21), respectfully applies for a decree enforcing a certain order to cease and desist issued by the "Commission" against respondents Whitney & Company, a corporation, and its officers, and James R. O'Brien, and his representatives, agents, and employees, on the 25th day of March, 1946 (11 F. R. 4969; 42 F. T. C. Dec. 138, 147) in a certain proceeding in-

stituted by and before the "Commission" styled "In the Matter of Carl Rubenstein* individually and acting as agent for and in behalf of his son, Samuel Rubenstein, Carl Rubenstein (partnership)*, Whitney & Company, a corporation, Puget Sound & Alaska Trading Company, Inc.,* a corporation, and James R. O'Brien" (F. T. C. Docket No. 5279, 42 F. T. C. Dec. 138.).

In support of its application, the "Commission" respectfully showeth unto the Court the following facts:

1. Respondent Whitney & Company (hereinafter referred to as "Whitney") is a corporation under and by virtue of the laws of the State of Washington; its officers are James R. O'Brien, President, Charlotte E. Jung, Vice-President, and Sam Rubenstein, Secretary and Treasurer. Respondent James R. O'Brien is an individual and an official of corporate respondent "Whitney." Respondents are engaged in business within the territorial jurisdiction of this Court and have their principal office

*The cease and desist order also runs against Carl Rubenstein, individually and as a copartner trading as Carl Rubenstein, and also against Puget Sound & Alaska Trading Company, Inc., a corporation, and its officers. However, they are not made respondents in this proceeding since Puget Sound & Alaska Trading Company, Inc., was dissolved on December 31, 1946, and Carl Rubenstein died March 19, 1947.

and place of business at 860 Central Building, Seattle, Washington.**

Since June 1936 respondents have been and are now engaged in the business of selling canned sea food products. In the course and conduct of their business, respondents have caused their said products to be shipped and transported from their place of business in the State of Washington to purchasers thereof located in various other states of the United States.

2. On the 12th day of February, 1945, the "Commission" issued its complaint against respondents, fully describing their method of doing business and charging them with having violated Section 2(c) of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (49 Stat. 1526, 1527; 15 U. S. C. 13 (c)) by paying or granting, directly or indirectly, commissions, brokerage, or other compensation, or discounts in lieu thereof, to buyers of their canned sea food products purchasing in their own name and for their own account for resale, as is more fully shown by the complaint certified up with the filing of this application and prayed to be read and considered as a part hereof. The "Commission's" complaint was served on respondents on the 14th day of February, 1945.

3. Thereafter, on the 26th day of February,

**On March 25, 1946, the date the cease and desist order was issued, respondents' principal office and place of business was 3001 Smith Tower Building, Seattle, Washington.

1945, respondents filed their original answer to the complaint but later moved the "Commission" for permission to withdraw their original answer and substitute in lieu thereof a supplemental answer dated the 11th day of December, 1945. The "Commission" granted respondents' request and on the 8th day of January, 1946, respondents withdrew their original answer and filed a substitute answer dated the 11th day of December, 1945, in which they admitted "each and every allegation of fact set forth in" the complaint; waived "all intervening procedure, including hearings as to the facts, Trial Examiner's Report and the filing of briefs and oral argument"; averring, however, that they had discontinued the unlawful practices complained of and stated that they had no intention of resuming such practices.

4. Thereupon, on the 25th day of March, 1946, the "commission" made its report in writing in said proceeding, setting forth therein its findings as to the facts and its conclusion that respondents had violated Section 2(c) of the Clayton Act, as amended, and issued the cease and desist order aforesaid, directing Whitney & Company and its officers, and James R. O'Brien and his representatives, agents, and employees "in connection with the sale and distribution of" canned sea food products, "in commerce as 'commerce' is defined in the aforesaid Clayton Act" to cease and desist from:

Paying or granting, directly or indirectly, to any buyer, anything of value as a commission or brokerage, or any compensation, allowance

or discount in lieu thereof, upon purchases made for such buyer's own account.

5. The "Commission's" order to cease and desist, issued as aforesaid on the 25th day of March, 1946, was duly served on respondents on the 1st day of April, 1946; and since the date of its issuance has been, and is now, in full force and effect.

6. Respondents have failed, neglected, and refused to obey the "Commission's" said order to cease and desist in that since the 25th day of March, 1946, they have continued to pay, grant or allow commissions or brokerage, or other compensation or allowance or discount in lieu thereof, to buyers who purchase in their own name and for their own account respondents' canned sea food products for resale.

The following are typical and representative of sales made in interstate commerce in which respondents have violated the cease and desist order issued as aforesaid:

(a) On or about the 16th day of November, 1946, Christian Brokerage Company, Atlanta, Georgia (hereinafter referred to as "Christian"), in its own name and for its own account, purchased from "Whitney" 2,000 cartons of canned salmon for resale. "Whitney" caused this salmon to be shipped freight collect in car No. NRC 17173 from Aberdeen, Washington, to Atlanta, Georgia, consigned as follows:

"Order of Whitney & Co. Notify Christian Bkge Co."

and invoiced this salmon as follows:

“Nov. 16, 1946. Sold to Christian Brokerage Co., 185 Spring St. SW. Atlanta, Ga. Terms 1½% Ten Days (\$330.00) F O B Coast 2,000 ctn. 48/1½ #F. ‘Golden Shore’ Chum Salmon @ 11.00 \$22,000.00”

On the 30th day of November, 1946, the Southern Railway Company, Atlanta, Georgia, billed “Christian” for the freight charges on this carload of salmon which “Christian” paid on the 6th day of December, 1946, with check No. 3931. “Christian” resold this salmon to nine of its customers. On or about the 2nd day of December, 1946, “Whitney,” acting in its corporate capacity, and under and by direction of its officers, paid “Christian” \$541.75, representing 2½% brokerage on \$21,670.00 net purchase price of this shipment of salmon to “Christian,” all of which is more fully shown by photostatic copies of the duplicate invoice and the freight bill attached hereto as Exhibits A and B, respectively, and prayed to be read as a part hereof.

(b) On or about the 14th day of July, 1947, “Christian,” Atlanta, Georgia, in its own name and for its own account purchased from “Whitney,” Seattle, Washington, 1109 cartons of canned salmon for resale. “Whitney” caused this salmon to be transported from Seattle, Washington, to Atlanta, Georgia, on the 25th day of July, 1947, freight collect, in car No. NP 27571; drawing a sight draft on “Christian” for \$18,298.50, the purchase price thereof, and billed this salmon as follows:

“July 24, 1947; Sold To Whitney & Co., c/o Christian Brokerage Co., 187 Spring St. SW., Atlanta, Ga., Terms $11\frac{1}{2}\%$ Ten Days F O B Coast 1109 ctn. 48/1# Tall Golden Shore Chum Salmon @ 16.50 18,298.50”

On the face of the invoice the following phrase was typed:

“This Is Memo Billing . . .”

and the following notation appeared in handwriting:

“Am sure you understand necessity for this procedure” signed “SR.”

The sight draft drawn on “Christian” was signed “Whitney & Company by Sam Rubenstein.” “Christian” paid the sight draft, less $11\frac{1}{2}\%$ discount, by check No. 4959 dated the 4th day of August, 1947, and on the 11th day of August, 1947, paid the freight charges on this car of salmon to the Southern Railway Company, Atlanta, Georgia, by check No. 4990. “Christian” resold this salmon to 21 of its customers. On or about the 11th day of August, 1947, “Whitney,” acting in its own corporate capacity and under and by direction of its officers, paid “Christian” \$450.60, representing $21\frac{1}{2}\%$ brokerage on \$18,024.02, net purchase price of this salmon to “Christian,” all of which is more fully shown by photostatic copies of: Memorandum Purchase Order dated July 14, 1947, marked Exhibit C; Confirmation Telegram dated July 16, 1947, signed by “Christian” marked Exhibit D; acknowledgment telegram

dated July 17, 1947, signed by "Whitney" marked Exhibit E; telegram dated July 23, 1947, advising shipment of order, signed by "Whitney" marked Exhibit F; letter addressed to "Christian" dated July 24, 1947, signed "Whitney & Company by Sam Rubenstein" marked Exhibit G; memo billing dated July 24, 1947, marked Exhibit H; paid sight draft dated July 24, 1947, drawn on "Christian" and signed "Whitney & Company by Sam Rubenstein" marked Exhibit I; cancelled check No. 4959 dated August 4, 1947, drawn by "Christian" in payment of sight draft, marked Exhibit J; confirmation memorandum dated August 6, 1947, marked Exhibit K; paid freight bill, marked Exhibit L; cancelled check No. 4990 dated August 11, 1947, in payment of freight bill, marked Exhibit M; memorandum of "damaged" or "bad order" goods, dated August 6, 1947, marked Exhibit N; brokerage notation dated 8/11/47 attached to duplicate copy of "Memo Billing" marked Exhibit O; entry in "Christian Cash Receipt Book" dated 8/11/47 showing brokerage of \$450.60 received from "Whitney," marked Exhibit P, all of which are attached hereto and prayed to be read as a part hereof.

Now, Therefore, in consideration of the premises and being without remedy save in a United States Court of Appeals, where, by virtue of the provisions of Section 11 of the Clayton Act (15 U.S.C. 21), matters of this nature are exclusively and properly cognizable, the "Commission" respectfully applies to this Honorable Court for a decree enforcing the aforesaid order to cease and desist issued, as afore-

said, on the 25th day of March, 1946, against Whitney & Company and its officers, and James R. O'Brien and his representatives, agents, and employees.

As required by Section 11 of the Clayton Act (15 U.S.C. 21) the "Commission" has caused a transcript of the entire record in its proceedings against respondents, as aforesaid, to be certified by its secretary and filed with the Court concurrently with the filing of this application.

Wherefore, the Federal Trade Commission prays the Court to cause its Clerk to forthwith issue a rule directed to Whitney & Company, a corporation, James R. O'Brien, its president, Charlotte E. Jung, its vice-president, and Sam Rubenstein, its secretary and treasurer, and James R. O'Brien, an individual, his representatives, agents and employees (whose names are not known) to show cause why this petition of the "Commission" for enforcement of its said order to cease and desist, issued on the 25th day of March, 1946, as aforesaid, should not be granted and cause such rule to be served upon said respondents by the appropriate United States Marshal; and the "Commission" further prays the Court to make and enter herein its decree enforcing the "Commission's" aforesaid order to cease and desist, issued as aforesaid, commanding respondents Whitney & Company, a corporation, and its officers, as aforesaid, and respondent James R. O'Brien, an

individual, his representatives, agents and employees, to obey the same and comply therewith.

Respectfully submitted,

FEDERAL TRADE COMMISSION,

By /s/ JAMES W. CASSEDY,

Associate General Counsel.

Dated at Washington, D. C., on this 22nd day of September, A. D., 1950.

City of Washington,
District of Columbia—ss.

Personally appeared before me, the undersigned authority in and for the District of Columbia, James W. Cassedy, personally known to me and known by me to be an Associate General Counsel of the Federal Trade Commission, who, being by me first sworn, did on his oath state that he is informed and verily believes that the matters and facts stated in the above and foregoing application are true and correct as therein stated.

Witness my signature and official seal this the 22nd day of September, 1950.

[Seal] /s/ OLIVER E. McADAMS,
Notary Public for the
District of Columbia.

My Commission expires the 14th day of August, 1954.

41
DUPLICATE

WHITNEY & COMPANY

NETED SALMON SALES AGENTS CANNED TUNA
SEATTLE

FEATURED BRANDS:

WHITNEY'S RED
BEST RED
RED RAMBLER
WHITWORTH
SPRITE
GOLDEN SMOK

TO
15
11

DATE Nov. 16, 1946
ROUTED NP 1487L HAS SOU

FOR DISTRIBUTION TO

CAR NO OR S. NRC 17173

INVOICED FOR ACCT OF

TERMS 1 1/2 TEN DAYS FOR CASH (\$330.00)

QUANTITY SIZE

BRAND AND GRADE

DOZEN

PRICE

0 ct. 4 / 10

Chum Salmon

11.00 \$22.00

Brook 2/1/270 Comm

WARING INSURANCE WHEN EFFECTED BY SHIPPERS
COVERED UNDER OPEN POLICY WITH
YANGTZE INSURANCE ASSOCIATION LTD.

DELIVERY
ORDER NO

346

CONTRACT
NO

INVOICE
NO 1230

ER

EXHIBIT A

4
32



TO: T. 45 ON BACK 11-45 Form 1649-T
 BY: (PRINT WITHIN)

FREIGHT BILL

SOUTHERN RAILWAY COMPANY, Dr.,
 on Articles transported:

ATLANTA, GA.,



ORDER OF WHITNEY AND CO
 NOTIFY CHRISTIAN BKGE CO

DATE
 11/30/46

FREIGHT BILL NO
 A 4458

(POINT OF ORIGIN TO DESTINATION)

MPLS MSTL ALBIA WAB ESTL SOU DAN CNOTP CHATT SOU PETERS ST

(PRINT FROM) WAYBILL DATE AND NUMBER (FULL NAME OF SHIPPER) CAR INITIALS AND NUMBER
 P ABERDEEN WASH 293 11/16/46 WHITNEY AND CO NRC 17173
 AND DATE OF SHIPMENT COMM LINE REFERENCE PREVIOUS WAYBILL REFERENCE ORIGINAL CAR INITIALS AND NUMBER
 T AGMT PLUGS IN VENTS CLOSED TO DESTN

NUMBER OF PACKAGES, ARTICLES AND MARKS		WEIGHT	RATE	FREIGHT	ADVANCES	TOTAL
000 CTNS 48 1/2 FLAT CANIED CHUM SALMON		66000	93	61380		61380
SLC		DEC 1946				TAX 18
PAYMENT MADE DEC-8 1946 MAIL CH. M. W. TAYLOR						6322
RECEIVED BY Date _____ For _____		Agent	WEIGHT SYMBOL L. C. L. FREIGHT * TOTAL PREPAID		TOTAL 6322	

For use at Junction Points on Freight subject to connecting line settlement. (Junction Agents will, on connecting line transfers, indicate by symbol how weight was obtained)

EXHIBIT B



05383

**BONDED WAREHOUSE
185 SPRING ST., S. W.
ATLANTA, GEORGIA**

Date _____

7192

T

CUSTOMER ORDER NO.

Address

For

Assessment of

Terms

QUANTITY	DESCRIPTION	PRICE	PER
10500	481 Tack		
	Balden Skye		
	Next Chest 1600		
	or may be more		
	Annular Skye		

**Bayer's
Signature**

Solomon

2025 RELEASE UNDER E.O. 14176

#256

EXHIBIT C



Exhibit D

Western Union
[Telegram]

Atlanta, Ga.

July 16, 1947.

Whitney & Company
860 Central Bldg
Seattle, Washington.

Rephone yesterday you confirmed car tall Golden
Shore Neutral Chums immediate shipment this
week please expedite shipping car quickly possible
increase all available this car or we can handle
another car if for immediate shipment this week
making two cars 1050 cases each car wire answer
quick quantity confirming date cars will depart from
Seattle.

CHRISTIAN BROKERAGE
COMPANY.

Paid Night Letter
Chg CB Co.

#257

Exhibit E

[Telegram]

1947 Jul 17 PM 7 39

QE97 TA21

T.EAC 136 NL PD—Seattle Wash 17
Christian Brokerage Co.

185 Spring St. SW Atlanta Ga.

Retel will not have more than minimum car tall
Chums this absolutely all available present time will

give you another car soon as some arrives from
Alaska car will be shipped this week.

WHITNEY & CO.

#258

Exhibit F

Western Union

[Telegram]

1947 Jul 23 PM 11 07

QC59 TA 88

T.EAB299 NL PD—Seattle Wash 23

Christian Brokerage Co.

187 Spring St. Southwest Atlanta Ga.

Shipped car Chums Car No NP27571 routed NP

Southern delivery approximately 1110 cases.

WHITNEY & CO.

[In Pencil]: 1110

7-23

960

150

NO NP 27571 NP 1110.

#259

Exhibit G

Whitney & Company
Distributors and Factors
Canned Salmon
860 Central Building
Seattle 4

July 24, 1947

Christian Brokerage Co.
187 Spring St. SW
Atlanta, Ga.

Gentlemen:

Enclosed herewith are copies invoice and bill of lading covering shipment to you in Car NP27571. Please be advised that we have drawn draft on you in the amount of \$18,298.50 as of this date.

Trusting this is satisfactory to you, we remain

Yours very truly,

WHITNEY & COMPANY.

/s/ SAM RUBENSTEIN.

R.

RM

Encl:

#260



DUPLICATE

49

WHITNEY & COMPANY

CANNED SALMON

SALES AGENTS

CANNED TUNA

CENTRAL BUILDING
SEATTLE

754
8/4/47

SR

DATE
ROUTED

CAR NO. OR S. S.

TERMS

to be
to Christler
7 Spring St.
to to, Va.
DISTRIBUTION TO:

9/13

SIZE	BRAND	GRADE	PRICE
------	-------	-------	-------

4/12 Tall

1109

15,745.50

1/270

274.48

This is what Billie.....

18,024.02

*Am sure you understand
necessity for this procedure*

Carb

Paid
8/3/47

OK 4459

SHIPPING	CONTRACT	INVOICE
ORDER NO. 20	NO	NO

WILL H

#261



WHITNEY & COMPANY
C. ED SALMON 77688

DRAFT NO. W60

Less 1st DAYS (\$274.48)

Pay to the order of . . . WHITNEY & COMPANY . . . \$18,298.50

REGISTERED MAIL 50073

Documents attached: Invoice, Order Bill of lading

To Christian Brokerage Co.
187 Spring St. SW
Atlanta, Ga.

WHITNEY & COMPANY

Present
through *[Signature]*

BY *[Signature]*

EXHIBIT I

*Draft - Whitney & Co.
18,298.50
- less 274.48
18,024.02*

CHRISTIAN BROKERAGE CO.

186 SPRING STREET S. W.
ATLANTA 3, GA.

No. 43

ATLANTA, GA.

PAY TO THE ORDER OF

The First National Bank
Eighteen thousand twenty-four & 03/100

\$18,024.03

Doi.

NORTHWEST BRANCH
TO THE BANK OF ATLANTA
ATLANTA, GEORGIA

CHRISTIAN BROKERAGE CO.

BY

[Signature]

31

EXHIBIT J

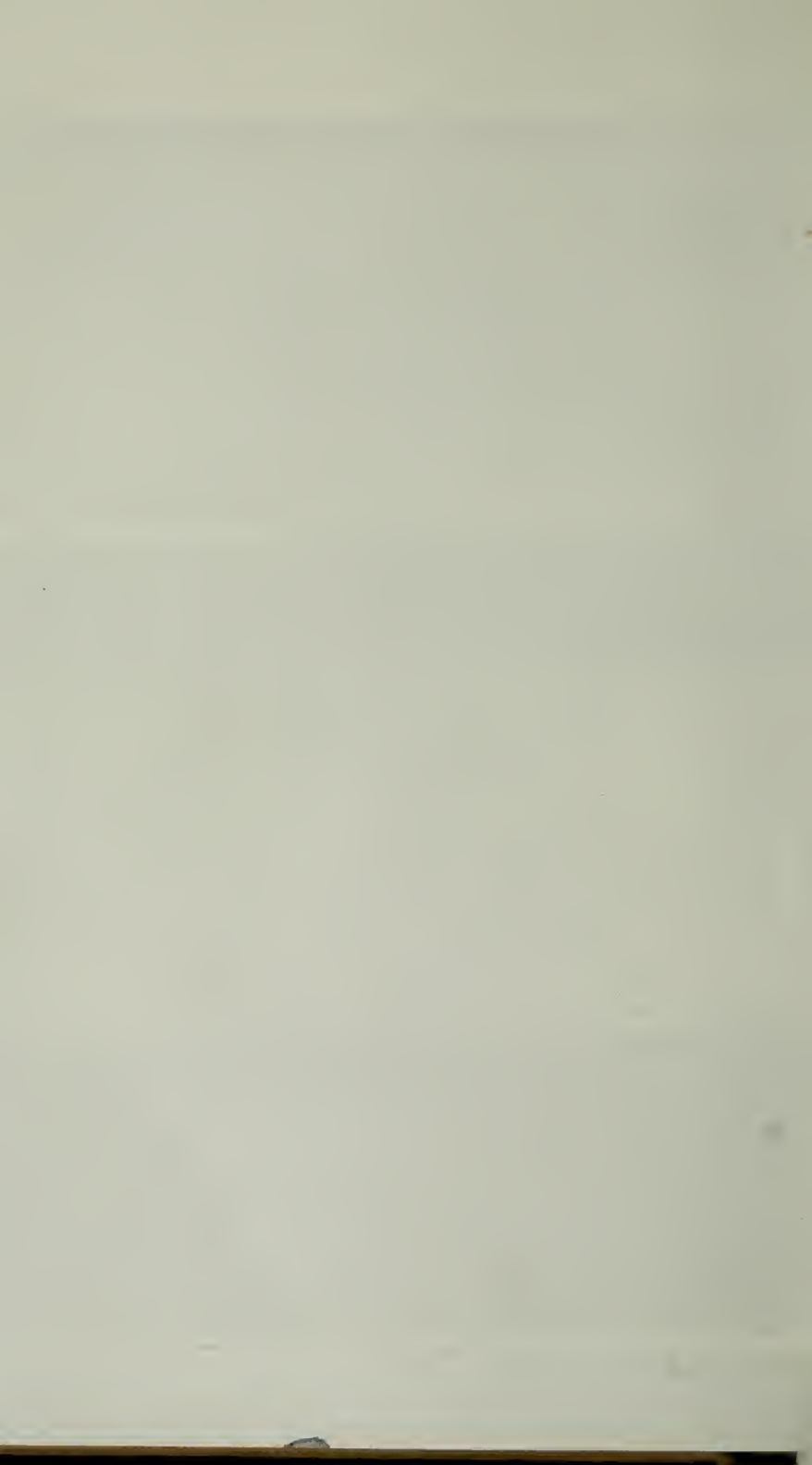


Exhibit K

Confirmation

Christian Brokerage Co.

Merchandise Brokers

185-187 Spring Street, S. W.

Atlanta, Ga.

No. 754

Date Aug. 6, 1947

Sold to..... Address.....

For account of Whitney & Co., Seattle, Wash.

Special Instructions.....

Car No. and Initial NP 27571 Route.....

Time of Shipment.....

Order Taken by.....

Terms of Sale.....

From Mr.....

We are not responsible for any claims beyond our control. Such claims must be made against seller.

Specifications: 1109 Cs. 48/1 Tall "Golden Shore"

Chum Salmon

13cs for RR.

CHRISTIAN BROKERAGE CO.

By /s/ H. L. SCORBOROUGH.

Accepted by 8-6-47.

#264

CHICAGO, ILL., MAY 1, 1914

DEAR MR. PRESIDENT:

I have the honor to acknowledge the receipt of your letter of the 28th inst.

and in reply to inform you that

the same has been forwarded to the

proper authorities for their consideration.

I am, Sir, very respectfully, your obedient servant,

JOHN D. HANCOCK, Secretary.

Very truly yours,

JOHN D. HANCOCK, Secretary.

JOHN D. HANCOCK, Secretary.

JOHN D. HANCOCK, Secretary.

JOHN D. HANCOCK, Secretary.

Very truly yours,

JOHN D. HANCOCK, Secretary.

JOHN D. HANCOCK, Secretary.

JOHN D. HANCOCK, Secretary.

JOHN D. HANCOCK, Secretary.

JOHN D. HANCOCK, Secretary.

JOHN D. HANCOCK, Secretary.

JOHN D. HANCOCK, Secretary.

COPIES FROM NP SEATTLE WASH	WAYBILL DATE AND NUMBER 7-23-47 3262	FULL NAME OF SHIPPER WHITNEY CO	CAR INITIALS AND NUMBER NP 27571
DATE AND DATE OF SHIPMENT	CONSIGNEE REFERENCE	PREVIOUS WAYBILL REFERENCE	ORIGINAL CAR INITIALS AND NO.

NUMBER OF PACKAGES, ARTICLES AND MARKS	WEIGHT	RATE	FREIGHT	ADVANCES	TOTAL
1109 CTN 48/1 TL GOLDEN SHORE CHUM SALMON	68758	101	69446	TX	69446 208 71529
WT AGT TCFB EX PIER 54 NP CHECKER SEALS W 836786-87					

Warehouse Location	RECEIVED PAYMENT	DATE	AGENT	WEIGHT SYMBOL	TOTAL
Post or Section	Per			L.C.L. FREIGHT	
				TOTAL PREPAID	

#4990

For use at Junction Points on Freight subject to connecting line settlement. Mark with number of connecting line transfer, indicate by symbol how weight was measured.

1-2-423 EXHIBIT L

B.A. Christian BIT #266

CONTAINED 2-27-48

CHRISTIAN BROKERAGE CO. 186 SPRING STREET, S. W. ATLANTA 3, GA.	AUG 13 1948 No. 4990	ATLANTA, GA. <i>Aug. 11, 1947</i>
--	----------------------	-----------------------------------

Southern Railway Co.

Seven hundred fifteen & 29/100

TO THE BANK OF ATLANTA

ATLANTA, GEORGIA

CHRISTIAN BROKERAGE CO.

B.A. Christian

EXHIBIT M

41

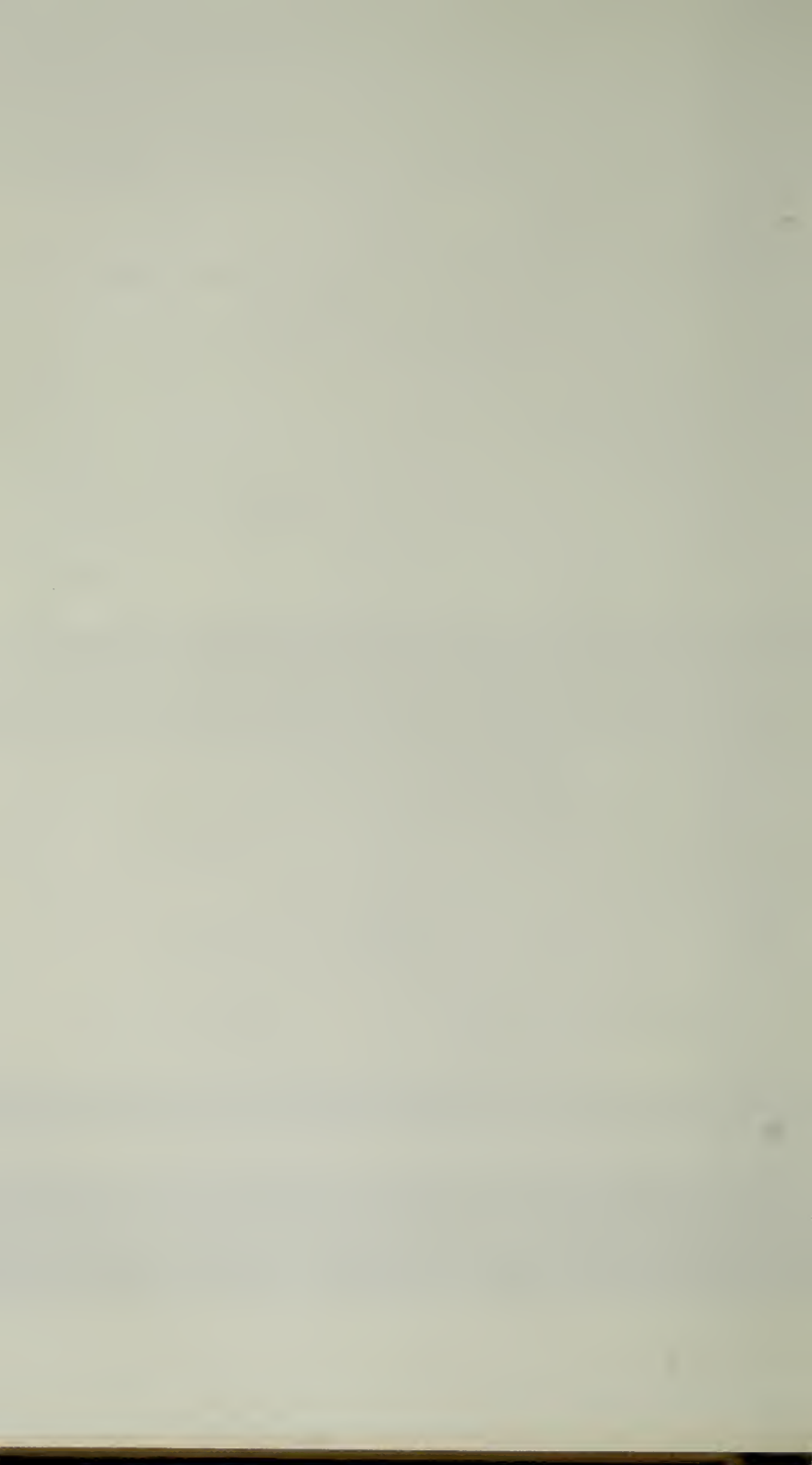


Exhibit N

754

Aug. 6, 1947

Claim #541

Whitney & Co., Seattle, Wash.

NP 27571

8-6-47

HLS

1109 Cs. 48/1 Tall "Golden Shore" Chum Salmon

38 cs had to be recased.

9 cs had to be reworked.

13 cs for RR. bad order.

Total 60

The bad order were all through the car. There were no brace in the door.

#268



DUPLICATE

54

WHITNEY & COMPANY

CANNED SALMON

SALES AGENTS

CANNED TUNA

CENTRAL BUILDING
SEATTLE

Whitney & Co.
c/o Portland Packing Co.
287 Spring St.
Portland, Me.
FOR DISTRIBUTION TO:

DATE July 21, 1947

ROUTED BY Mr. V.C. Goss, Seattle

CAR NO. OR S.S. 572752

TERMS 2% TO DATE OF SHIPMENT

274.48

QTY	SIZE	BRAND	GRADE	PRICE
1000	4 1/2 Tall	Golden Eagle	1109	18.00 18,198.00

net 18,024.02

Broker -
\$450.60

611
5/11/47

#269

EXHIBIT O

413

#270



Exhibit P

Brokerage Received by Christian
During Calendar Year 1947

8/11/47—Whitney & Co. 450.60

[Endorsed]: Filed Sept. 29, 1950.

[Title of Court of Appeals and Cause.]

PETITIONER'S STATEMENT OF POINTS
UPON WHICH IT INTENDS TO RELY

To: Paul P. O'Brien, Esquire, Clerk of the United
States Court of Appeals for the Ninth Circuit.

Now Comes the Federal Trade Commission, petitioner, by James W. Cassedy, its attorney, and, pursuant to subdivision 6 of Rule 19 of Your Honorable Court, herewith files its statement of the points upon which it intends to rely in support of its application for a decree of enforcement in the above styled cause:

I.

The Findings as to the Facts, issued by the Commission on the 25th day of March 1946, is based upon and supported by incontrovertible, competent, substantial evidence, was properly made and supports the conclusion of the Commission that respondents had violated Section 2(c) of the Clayton Act, as amended;

II.

The Cease and Desist Order issued by the Com-

mission on the 25th day of March, 1946, is based upon the conclusion that respondent had violated the law as charged in the complaint, is fully supported by the aforesaid Findings as to the Facts, was properly entered, is legal and binding on respondents, and, since the date of its issuance, has been, and is now, in full force and effect;

III.

Respondents have failed, neglected and refused to obey the Cease and Desist Order, issued on the 25th day of March 1946, as aforesaid, in that: On or about the 2nd day of December 1946 and on or about the 11th day of August 1947, respondents violated said order by paying Christian Brokerage Company of Atlanta, Georgia, prohibited brokerage on purchases made by Christian in its own name and for its own account.

Dated at Washington, D. C., this the 22nd day of September, A. D., 1950.

FEDERAL TRADE COMMISSION,

By /s/ JAMES W. CASSEDY,
Associate General Counsel,
Attorney for Petitioner.

[Endorsed]: Filed Sept. 29, 1950.

[Title of Court of Appeals and Cause.]

AFFIDAVIT OF SERVICE OF STATEMENT
AND DESIGNATION

I, the undersigned, James W. Cassedy, an Associate General Counsel of the Federal Trade Commission, petitioner in the above styled cause, and its attorney of record, do hereby certify that on the 22nd day of September, 1950, pursuant to subdivision 6 of Rule 19 of this Honorable Court, I caused to be forwarded to Whitney & Company, a corporation, James R. O'Brien, its president, Charlotte E. Jung, its vice president, and Sam Rubenstein, its secretary and treasurer, and James R. O'Brien, an individual, by first-class, registered mail, postage prepaid, addressed to their principal office and place of business located at 860 Central Building, Seattle, Washington, a true and correct copy of:

1. Petitioner's Statement of Points to be Relied Upon; and

2. Petitioner's Designation of the Parts of the Record Material and Essential to the Consideration of the Question Raised in the Above Styled Matter.

Dated at Washington, D. C., this the 22nd day of September, 1950.

/s/ JAMES W. CASSEDY.

Associate General Counsel, Attorney for Federal
Trade Commission.

Subscribed and sworn to before me this 22nd day of September, 1950.

[Seal] /s/ OLIVER E. McADAMS,
Notary Public for the District
of Columbia.

My commission expires the 14th day of August, 1954.

[Endorsed]: Filed Sept. 29, 1950.

[Title of Court of Appeals and Cause.]

PETITIONER'S DESIGNATION OF PARTS
OF THE RECORD TO BE PRINTED

To: Paul P. O'Brien, Esquire, Clerk of the United
States Court of Appeals for the Ninth Circuit.

Now Comes the Federal Trade Commission, petitioner, by James W. Cassedy, its attorney, and, pursuant to subdivision 6 of Rule 19 of Your Honorable Court, hereby designates the following parts of the record which are material and essential to the consideration of the question raised in the above styled cause:

1. Complaint issued by the Federal Trade Commission dated the 12th day of February, A. D., 1945 (F.T.C. Docket No. 5279).
2. Answer of respondents dated the 11th day of December 1945 (F.T.C. Docket No. 5279).
3. Federal Trade Commission's Findings as to

the Facts and Conclusion, dated the 25th day of March, A. D., 1946 (F.T.C. Docket No. 5279).

4. Federal Trade Commission's Order to Cease and Desist, dated the 25th day of March, A. D., 1946 (F.T.C. Docket No. 5279).

Dated at Washington, D. C., this the 22nd day of September, A. D., 1950.

FEDERAL TRADE
COMMISSION,

By /s/ JAMES W. CASSEDY,
Associate General Counsel,
Attorney for Petitioner.

[Endorsed]: Filed Sept. 29, 1950.

[Title of Court of Appeals and Cause.]

ANSWER OF RESPONDENTS TO APPLICATION
FOR ENFORCEMENT OF ORDER
TO CEASE AND DESIST

Come now respondents by and through their attorneys and for answer to the application for Enforcement of order to Cease and Desist state as follows:

1. Respondents admit the allegations contained in paragraph I except that respondents state that the officers of Whitney & Company, a corporation, are Sam Rubenstein, President; E. G. Wilson, Vice-President; C. E. Jung, Secretary; and R. M. Mc-

Kinley, Treasurer; and that James R. O'Brien is not an official nor is he employed by Whitney & Company.

2. Respondents admit the allegations contained in paragraph 2 of said Application.

3. Respondents admit the allegations contained in paragraph 3 of the Application.

4. Respondents admit the allegations contained in paragraph 4 of the Application.

5. Respondents admit the allegations contained in paragraph 5 of the Application.

6. Respondents deny the allegations contained in paragraph 6 of said Application, including the allegations and conclusions of fact set forth in sub-paragraphs (a) and (b) thereof and deny that the transactions set forth in sub-paragraphs (a) and (b) of said paragraph 6 constitute or are typical and representative of sales made in interstate commerce in which respondents have violated the cease and desist order referred to. Respondents further state that the canned salmon referred to in sub-paragraphs (a) and (b) of said paragraph 6 was not sold by Whitney & Company to Christian Brokerage Co., but was in fact sold to various buyers by and through Christian Brokerage Co. acting as broker and not as buyer.

Wherefore, respondents having fully answered the Application for Enforcement of Order to Cease and Desist of petitioner pray that said application

be dismissed and that respondents be afforded such other relief as may be just and proper in the premises.

Respectfully submitted,

BOGLE, BOGLE & GATES,

/s/ [Indistinguishable.]

Attorneys for

All Respondents.

[Endorsed]: Filed Dec. 15, 1950.

ORDER TO SHOW CAUSE

No. 12700

United States of America—ss.

The President of the United States of America
To Whitney & Company, a Corporation; James R.
O'Brien, President; Charlotte Jung, Vice-Pres-
ident; Sam Rubenstein, Secretary and Treas-
urer, and James R. O'Brien, Individually, 860
Central Bldg., Seattle, Washington.

Greeting:

Pursuant to the provisions of Subdivision (c)
of Section 45, U.S.C.A. Title 15, and 15 U.S.C.,
§21, you and each of you are hereby notified that on
the 29th day of September, 1950, a petition of the
Federal Trade Commission for enforcement of its
order entered on March 25, 1946, in a proceeding
known upon the records of the said Commission as

“In the Matter of Carl Rubenstein, etc., Whitney & Company, a corporation, Puget Sound & Alaska Trading Company, Inc., and James R. O’Brien, Fed. Trade Comm. Docket No. 5279,” and for entry of a decree by the United States Court of Appeals for the Ninth Circuit, was filed in the said United States Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, this 14th day of November, in the year of our Lord one thousand, nine hundred and fifty.

[Seal] /s/ PAUL P. O’BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

[Return on Service Attached.]

[Endorsed]: Filed Nov. 24, 1950.